

government agent cannot alter the governmental intent behind the bonds, which was to pay no more than the 3½ per cent. Indicative of that intent, defendant claims, is Congress' repeal of the statutory provision for "flower bonds," a provision that had resulted in large revenue losses. 31 U.S.C. § 757c-4; Senate Report No. 72-28, 92d Cong. (1st Session-1 Cum.Bull. 623). Also, defendant notes that Form PD 1782, which was completed by plaintiffs prior to substituting the redeemable Treasury bonds for payment of estate taxes, contained the following restrictive language:

No substitution will be permitted unless the claim to interest on the overpayment resulting therefrom is waived.

Similar language was contained within paragraph 5(c) of the form itself.

In consideration of the substitution, the undersigned waives claim to interest on the overpayment resulting from such action.

The Court, in reviewing plaintiffs' argument, concurs with defendant's assertion that, absent any apparent intent to deceive or mislead, the Government is neither bound nor estopped by an unauthorized act of one of its agents. *Wilber National Bank v. United States*, 294 U.S. 120, 123-24, 55 S.Ct. 362, 79 L.Ed. 798 (1935); *United States v. Kates*, 419 F.Supp. 846, 850 (E.D. Pa.1976). In this case there is evidence to suggest that the communication from Seidman as to the flower bonds was in fact unauthorized or at least contrary to Congressional intent. Clearly, as all parties concede, the Government can establish the terms and conditions under which such bonds may be used to satisfy tax obligations and determine the conditions under which overpayment by bonds can be refunded. *Smietanka v. Ullman*, 275 F. 814, 815 (7th Cir. 1921). It is for this reason that considerable significance attaches to Form PD 1782. While plaintiffs may be correct in claiming that the form does not specifically address the problem of statutory interest on an overpayment of illegally assessed estate tax, the importance of the form is not that it constitutes a waiver but that it is sugges-

tive of the Government's intent and puts the taxpayer on notice of that intent—not to pay more than 3½ per cent on flower bonds in any situation.

This Court cannot say that the Government's action is either an unreasonable or unfair implementation of a Congressional enactment which provided for bonds that saved the taxpayer money in the first instance. While the Court sees merit in an argument that the Government should be required to pay the 3½ per cent owing on the bonds plus an additional 3½ per cent, to bring the interest up to the approximate 7 per cent paid on cash for which the flower bonds were a substitute, it sees little merit in plaintiffs' argument for 3½ per cent plus 7 per cent, which essentially petitions for "windfall" profit. Neither of these two positions however, can be sustained in face of the Form PD 1782.

Accordingly,

IT IS HEREBY ORDERED that statutory interest is not due upon the bonds refunded but only upon the cash paid to satisfy the deficiency assessed.

**The NUMBER WORKERS COMPANY,
INC., Plaintiff,**

v.

**NEW DIMENSIONS IN EDUCATION,
INC., Defendant.**

No. 77 Civ. 1003.

United States District Court,
S. D. New York.

July 8, 1977.

Weil, Gotshal & Manges, New York City, for defendant by Michael D. Hess, Phyllis N. Segal, New York City, of counsel.

MEMORANDUM AND ORDER

KEVIN THOMAS DUFFY, District Judge.

This is an action for declaratory relief whereby plaintiff seeks a judgment (1) that it is not interfering with any contractual rights of the defendant; (2) that plaintiff's mathematics program does not infringe any copyrights claimed by defendant; (3) that plaintiff is not guilty of unfair competition; and (4) that defendant is barred by estoppel and acquiescence from asserting against plaintiff claims of tortious interference with contract, copyright infringement and unfair competition.

The defendant, two days after the initiation of this action, brought an action in the Eastern District of New York asserting the same subject matter violations which this action seeks to have declared unavailable to the defendant. The Eastern District case also includes as a defendant Dr. Bernard Kauderer, the president of the plaintiff herein.

Needless to say, the two cases apparently came into being from the desultory results of extended settlement negotiations between the parties.

The plaintiff herein has now moved for an injunction against the defendants from pursuing the action in the Eastern District of New York. The defendant has cross-moved for a stay of this action pending the outcome of the Eastern District action. In its motion to stay this action the defendants contend that proper venue lies in the Eastern District since the plaintiff herein, The Number Workers Company, Inc. (hereinafter "Number Workers") has its principal place of business in the Eastern District and the president (and added party in the Eastern District case) resides in that district. The Number Workers business operates throughout the United States although the plaintiff alleges that it does business in the Southern District of New York. In effect,

Rogers, Hoge & Hills, New York City, for plaintiff by Marie V. Driscoll, New York City, of counsel.

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the defendant alleges that it should be able to proceed in the Eastern District of New York because the balance of convenience tips in favor of that District.

The plaintiff claims that since this case was initiated first, it should have priority; *Mattel, Inc. v. Louis Marx & Co.*, 353 F.2d 421, 423 (2d Cir. 1965) *cert. dismissed*, 384 U.S. 948, 86 S.Ct. 1475, 16 L.Ed.2d 546 (1966); and that the requested injunction should issue against the prosecution of the Eastern District case. If such is the case, Dr. Bernard Kauderer has consented to the jurisdiction of this Court for any counterclaim that the defendant may bring in this action. Thus, the plaintiff argues, it will be possible to have all the issues between the parties determined in this action.

But it must be recognized that all of the issues which can be raised between the parties are already set forth in the Eastern District action; so in that sense, the Eastern District action was started prior in time to this action. No amendment of the pleadings is required in the Eastern District action to resolve all the disputes between the parties. In this action, such amendment must take place and Dr. Kauderer must somehow be added as a party.

It cannot be said that there will be any inconvenience to any party in permitting the Eastern District action to proceed. The courthouse in the Eastern District of New York is located but four subway stops away or slightly over a mile from this Court via the Brooklyn Bridge.

The plaintiff's motion for an injunction is therefore denied and the defendant's motion for a stay of this action is granted.

The case is to be put on the suspense docket of this Court.

IT IS SO ORDERED.

[REDACTED]

**AIME BELLAVANCE & SONS, INC. and
Robert W. Belville and Freda H. Belville
d/b/a New York and Vermont Motor
Express, Plaintiffs,**

v.

**The UNITED STATES of America IN-
TERSTATE COMMERCE COMMIS-
SION and Theodore Rossi Trucking Co.,
Inc., Defendants.**

No. 75-24.

United States District Court,
D. Vermont.

July 11, 1977.

[REDACTED]

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